[ORIGINAL CIVIL JURISDICTION]

LAW, Ag. C.J.

October 12, 1912.

In re D. W. THOMPSON, deceased.

J. D. THOMAS

v.

L. FERNANDEZ.

[SINGAPORE PROBATE No. 26 of 1908]

Costs—Order for security—Order for filing of pleadings—Effect of non-filing on Order for security — Jurisdiction — Civil Procedure Code 1907, ss. 4, 917, 1258.

After an Order for pleadings under s. 917 of the Civil Procedure Code 1907 but before the filing of the Statement of Claim, an Order was made requiring the party seeking to have the Probate revoked, to give security for the Executor's "probable costs in this action" and containing a stay of proceedings until security was given. The said party had, after the Order for security, obtained an Order (*ex parte*) for leave to proceed with her case *in forma pauperis*.

Held, that the Order for security was made without jurisdiction and therefore in-operative.

Motion.

On the 6th July, 1908, on the application of Mrs. J. D. Thomas the widow of one D. W. Thompson *alias* Thomas an Order was made under s. 917 of the Civil Procedure Code 1907, directing pleadings to be filed.

On the 28th August, 1908, L. Fernandez the Executor of the Will of the said deceased obtained an Order requiring the said Mrs. Thomas to give security for "the probable costs of this Defendant in this action and staying further proceeding in this matter" in the meantime.

On the 23rd September, 1908, the said Mrs. Thomas obtained an Order *ex parte* to proceed with her case *in forma pauperis* and on the 5th October, 1908, she applied to have the Order for security set aside or discharged. No Statement of Claim had yet been filed.

Knowles for the Widow.

Chopard for the Executor.

LAW, AG., C.J.—I wanted to look at the various sections referred to in this case and to consider the matter because it was rather a new point. [After reading the Order for security and the motion to set aside the same, the learned Judge said]: What had happened was that it had been ordered that pleadings should be filed under section 917 of the Civil Procedure Code. There had been a motion to revoke the Probate and on that an order was made. Then subsequently before the Statement of Claim had been filed a summons was issued and an order was made directing the Plaintiff to find security. This is a special local procedure and it seems to me that there was no action pending at the time, because this section 917 says that " thereupon an action shall be deemed to have been commenced." It seems to me that under this section, the action cannot be deemed to be commenced until after the filing of the Statement of claim, and that the filing thereof is like the issue of a writ in an action of this description. I think some suggestion was made that section 1258 shows that a Plaintiff in any cause or matter may be ordered to give security or in default his action may be dismissed but the action cannot possibly be dismissed unless it has been begun. And it was also suggested that " Plaintiff " includes every person asking any relief by a motion (see section 4). It is quite a different thing to ask for costs of an action, and another to ask for costs of a motion.

Order for security discharged.

Solicitor for the Widow—

E. R. Koek (Sr.)

Solicitors for the Executor—

Farrer-Baynes & Chopard.

THE END OF THE STRAITS SETTLEMENTS OFFICIAL REPORTS.